

Conviction based on Confession and Circumstantial evidence  
including lost seen

607

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi

Cr. Jail Appeal No.D- 42 of 2014  
[Confirmation Case No.08 of 2014]

Mst. Khadeja

Versus

The State

Appellant Mst. Khadeja;	through Syed Shafiq Ahmed Shah Advocate
Respondent the State;	through Ms. Rameshan Oad, A.P.G
Complainant Haji;	In person
Date of hearing;	15.06.2021
Date of judgment	22.06.2021

JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J.**-This criminal jail appeal is directed against the judgment dated 16.04.2014, passed by learned III-Additional Sessions Judge, Hyderabad, in Sessions Case No.232 of 2012 (re: The State V Uris and another), emanating from Crime No.106 of 2010, registered at Police Station Shahpur Chakar, under sections 364, 302, 201 and 34 PPC, whereby the accused / appellant has been convicted u/s 302(b) PPC and sentenced to death as Ta'zir subject to confirmation by this Court. She was also convicted under section 201 PPC and sentenced to suffer R.I for 07 years. She was further directed to pay compensation of Rs.2,00,000/- to the heirs of the deceased. In default thereof, she shall suffer simple imprisonment for six months more. She was also extended the benefit of section 382-B Cr.P.C.



2. The facts of the prosecution case as stated in the F.I.R, registered by complainant Haji on 23.12.2010 at 1545 hours at Police Station Shahpur Chakar are as under:-

"Complaint of complainant is that " I am residing on the above mentioned address and doing the business of cattle. My brother Muhammad Uris aged about 40 years, who is younger than me, who resides at some distance along with his family members. The wife of my brother Muhammad Uris namely Khadeja alias Guddi was annoyed with him on account of saying goodness. On 05.10.2010, my nephew Mir Hassan son of Din Muhammad and Lal Dino son of Abdullah went to the house of my brother Muhammad Uris, where Uris alias Porho Dahari and two unknown persons who will be identified as and when again seen, were available as guests. **We after some time went to our house after getting permission from my brother.** We knew on morning that Muhammad Uris was not available in his house, whereupon I, and Mir Hassan went to the house of my brother Muhammad Uris in order to know about him, where wife of my brother Khadeja alias Guddi disclosed that she did not know where he went and disclosed suspicious things and guests were also not available. Thereafter we all searched and inquired about Muhammad Uris at various places, but could not be know about him till today. Now I appeared and complain that accused Uris alias Porho son of Muhammad Aalam Dahari resident of near Hala, (2) Mst. Khadeja alias Guddi daughter of Moula Bux wife of Muhammad Uris and two unknown person have kidnapped my brother with intention to kill him, whose whereabouts could not be known till today. I am the complainant investigation may be done."

3. It is pertinent to mention here that initially the FIR was registered only with regard to the abduction of the deceased under section 364, 34 PPC, however, upon recovery of dead body of the deceased, sections 302 and 201 PPC were also added in the challan submitted before the concerned court.
4. Police arrested the accused / appellant Mst. Khadeja and co-accused Uris alias Porho and after usual investigation, submitted the challan before the concerned court. After completing necessary formalities, learned trial court framed charge against the accused / appellant, to which she pleaded not guilty and claimed trial.
5. In order to prove its case the prosecution examined 8 witnesses, who exhibited numerous documents and other items and thereafter prosecution side was closed. Thereafter, statement of accused was recorded under Section 342 Cr.PC in which she denied the allegations leveled against her. She did not give evidence under oath and did not call any DW's in support of her defence case.
6. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the appellant/accused as 'mentioned earlier in this judgment vide



Judgment dated 16.04.2014 hence the appellant has filed this appeal against her conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 16.04.2014 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that she is innocent of any wrong doing and that she has been falsely implicated in this case by the complainant party; that there was an unexplained delay of three months in lodging the FIR by the complainant during which period a cooked up case was made against the appellant by the complainant; that there is no eye witness to the murder which was an unseen incident; that it was not possible to correctly identify the body due to decomposition; that her confession was not voluntarily made and the required safe guards for recording confession before a judicial magistrate were not followed and there was a long delay in recording her confession which was retracted at trial and as such the same could not be relied upon to convict her and for any of the above reasons the appellant should be acquitted of the charge by extending her the benefit of the doubt. In support of his contentions he has placed reliance on the cases of **Azeem Khan and another V Mujahid Khan and others** (2016 SCMR 274), **Gul Muhammad and another V The State through Prosecutor-General Balochistan** (2021 SCMR 381), **Muhammad Yaseen V The State** (2021 SCMR 404), **The State through P.G Sindh and others V Ahmed Omar Sheikh and others** (2021 SCMR 873) and **Habab Ahmed V The State** (2020 YLR 238).

9. On the other hand learned Addl. Prosecutor General who was also representing the complainant on his instructions has fully supported the impugned judgment and contended that the delay in lodging the FIR has been explained; that it is a case of circumstantial evidence whereby the prosecution has proved its case beyond a reasonable doubt against the appellant through the appellant's pointation of the place where the body of the deceased was buried which was in front of the house in which she was living with the deceased; that the deceased was correctly identified by a close relative who could easily identify him and his clothes; that the appellant had confessed to the murder which confession was made voluntarily and truthfully and was corroborated by the medical evidence and the murder weapon (hammer) which had been recovered from the house where she was living along with the spade used to bury the deceased in the front of her house at her pointation and as such the prosecution had proved its case beyond a reasonable doubt against



the appellant and as such her appeal should be dismissed and her conviction and sentence maintained. In support of her contentions she has placed reliance on the case of **Muslim Shah V The State** (PLD 2005 Supreme Court 168), **Mukhtar Alam V Fazal Nawab and another** (2020 SCMR 618) and **Muhammad Abbas V The State** (PLD 2020 Supreme Court 620).

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

11. At the outset it should be noted that the appellant's co-accused Uris who allegedly caused the hammer blows to the head of the deceased and was convicted and sentenced to death for the murder of the deceased vide the impugned judgment was later released by this court under S.426 Cr.PC as he was suffering from terminal cancer and later died and as such the appeal against his conviction has abated.

12. Based on our reassessment of the evidence of the PW's, especially the medical evidence of PW 6 Dr. Hadi Bukhsh, the exhumation report and post mortem report including cause of death and recovery of hammer we find that the prosecution has proved beyond a reasonable doubt that on or about 5/6. 10.2010 Muhammed Uris (the deceased) was murdered by being hit over the head with a hammer and then buried in the yard of the house of deceased and appellant Mst.Kateja situated near village Amanullah Dahari, Deh Topan Dahari within the jurisdiction of PS Shahpur Chakar.

13. The only question left before us therefore is whether the appellant was involved in the murder of the deceased by hitting him over the head with a hammer around the said date and location.

14. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which she was convicted for the following reasons;

- (a) That although the FIR was lodged after a delay of around three months we do not based on the particular facts and circumstances of this case consider this to be fatal to the prosecution case. This is because PW 1 Haji the complainant, PW 2 Mir Hasan, PW 3 Lal Dino all visited the house of the deceased on the evening of 5/6.10.2020 where they saw the deceased, the appellant, the deceased co-accused and two of his relatives and the appellant the next day informed PW 1 Haji that the deceased was missing who told the same to PW 2 Mir Hasan and PW 3 Lal Dino who all went searching for the missing deceased. In cases where a person goes missing it is not uncommon

for the FIR to be lodged belatedly as the priority of the relatives is to find the missing person and less importance is placed on lodging the FIR especially when the missing person is an adult as in this case with only the bare allegation that he has gone missing and no one is named to be responsible for his abduction. Once the complainant became suspicious of the appellant and her now deceased's co-appellant's involvement in the abduction he lodged the FIR three months later specifically nominating the appellant and her deceased co-accused in the abduction/murder of the deceased. **Each case must be considered on its own particular facts and circumstances.** In this case no one knew where the deceased had gone, no one had seen him being abducted, no ransom call or note was ever received and he was last seen alive on 5/6.10.2010 at about 8.15 pm by PW Subhan Ali who was an independent witness who on the invitation of the deceased had had dinner with him on that evening when the appellant and the deceased appellants co-accused were present and the next day he came to know that the deceased was missing as corroborated by PW 1, 2 and 3 as mentioned above. **As a general rule delay in lodging an FIR is often fatal to the prosecution case because it gives time for the complainant to cook up a false case against the accused often in collusion with the police.** However based on the particular facts and circumstances of this case such delay is not relevant keeping in view the fact that the deceased's dead body was exhumed in front of the house in which he and the appellant were living which could not possibly have been planted their by the complainant party in order to fix the appellant in a false case without the appellant knowing about such burial as she was living in the house from the time the deceased went missing until his body was exhumed. In applying the law judges must strive to apply logic and commonsense in order to reach a correct conclusion based on the evidence. Thus, based on the particular facts and circumstances of this case the delay in lodging the FIR is not fatal to the prosecution's case.

- (b) Admittedly there is no eye witness to the incident and this is a case of circumstantial evidence.

#### **The law on circumstantial evidence.**

With regard to circumstantial evidence leading to a conviction in a capital case it was held as under in **Fayyaz Ahmed V State** (2017 SCMR 2026) at P.2030 para's 5 and 6 which are reproduced as under;

**"To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is, that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature where many links are missing in the chain.**

To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence **because fabricating of such evidence is not uncommon as we have noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence.** "Reasonable Doubt" does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. If it is short of such standard, it is better to



discard the same so that an innocent person might not be sent to gallows. To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without missing link, otherwise at random reliance on such evidence would result in failure of justice.

It may also be kept in mind that sometimes the investigating agency collects circumstantial evidence seems apparently believable however, if the strict standards of scrutiny are applied there would appear many cracks and doubts in the same which are always inherent therein and in that case Courts have to discard and disbelieve the same." (bold added)

15. In the case of **Azeem Khan** (Supra) the following was reiterated with respect to circumstantial evidence at P.290 as under;

"In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is to be ruled out, therefore hard and fast rules should be applied for carefully and narrowly examining circumstantial evidence in such cases because chances of fabricating such evidence are always there. To justify the inference of guilt of an accused person, the circumstantial evidence must be of a quality to be incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same by awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice."

16. Thus, what is the chain of evidence which the prosecution has produced in this case which provides all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused?

- (i) The first link in the chain is the evidence of PW 1 Haji, PW 2 Mir Hasan and PW 3 Lal Dino who all went to the deceased house on the evening of 5/6.10.2010 where they saw the deceased, the appellant and the deceased co-appellant with two of his relatives. These three PW's corroborate each other in all material respects and were not chance witnesses and as such we have no reason to disbelieve their evidence about this meeting at the house of the deceased especially as they were all cross examined and there evidence was not dented. Next comes the more important PW 4 Subhan Ali who was an independent witness who gave evidence that the deceased invited him over for dinner on the

night of 5/6.10.2010 where he had dinner with the deceased and where he also saw the appellant and the deceased co-appellant. He was not dented on cross examination and there is no reason to disbelieve his evidence. The next day PW 1 Haji came to know that the deceased was missing. As such PW 1, 2 . 3 and especially PW 4 Subhan's evidence amounts to last seen evidence. Although it does not meet the strict legal requirements of last seen evidence as laid down in **Fayyaz's case** (Supra) and **Muhammed Abid V State** we are of the view that some weight can be given to it in this case especially as the post mortem carried out by the special medical team after exhumation of the deceased body found that the time between death and post mortem was 13 to 14 weeks which roughly ties in with the time when the deceased was last seen alive by PW's 1,2,3 and 4 especially when this is linked to the place from where the deceased's dead body was exhumed. Namely outside the house where the deceased last had dinner with PW 4 Subhan Ali which was the house where the deceased and the appellant were living and the deceased had been seen with the appellant and deceased co-accused on the night on which he was last seen alive.

- (ii) **The next link in the chain** is that on 23.12.2010 on the day when the FIR was lodged PW 8 Niazmuddin who was the IO of the case visited the wardat with independent mashir PW 8 Attaullah who is a laborer and unrelated to any party. The IO then arrested the deceased co-accused based on the FIR in which he was named as a suspect by the complainant. During interrogation the deceased co-accused confessed to the IO that he had along with the appellant committed the murder of the deceased and buried the dead body in the house of the deceased. Based on this lead the IO then proceeded to the house of the deceased where he arrested the appellant. The appellant on the same day on her pointation handed over to the police the hammer which was used to murder the deceased and spade which was used to dig the hole in which the deceased was buried in order to conceal the crime. All the relevant mashirnama's were exhibited in evidence including arrest and recovery. That no enmity has been suggested against the police or the mashir and as such neither the police nor the mashir had any reason to falsely implicate the accused and as such we believe their evidence.
- (iii) **The next link in the chain.** The most important aspect of the arrest and recovery from the appellant is the place where she pointed out where the deceased was buried which exact place no body except the appellant and her deceased co-accused would have known about and as such as mentioned earlier no one could have planted the dead body without the appellant knowing about it as she was living in the house both at the last dinner with her husband/deceased when PW 4 Subhan Ali came to dinner with him up to the time when the body was recovered. It is beyond comprehension that some one could have dug a four foot hole in her yard with spades without the appellant knowing about it whether such hole was dug in the night or the day time.
- (iv) **The next link in the chain.** The murder weapon (hammer) and spade used to dig the hole where the deceased was found was also handed over to the police on the appellant's pointation.



- (v) **The next link in the chain.** On 28.12.10 the IO moved an application before the court to exhume the body. The application was allowed and the secretary health established a special medical board for this purpose. On 07.01.2011 on the pointation of the appellant in front of PW 5 Abdul Hakeem who was the judicial magistrate, PW 8 Niazmuddin who was the IO and PW 6 Dr.Hadi Bukhsh who was a part of the medical board the body of the deceased was exhumed.
- (vi) **The next link in the chain.** The body of the deceased despite being decomposed was recognized by his brother PW 1 Haji to whom PW 8 Niazmuddin the IO handed over the dead body of the deceased after the post mortem.
- (vii) **The next link in the chain.** The Final exhumation report opined that the deceased in effect died from injuries to vital organs i.e brain. Such injuries are consistent with being hit over the head with the recovered hammer which was also found to be blood stained in the chemical report.
- (viii) **The next link in the chain** is the judicial confession which the appellant made before judicial magistrate PW 5 Abdul Hakeem on 08.01.2011 which reads as under;

**"Statement of accused Khadija u/s 164 Cr.P.C.**

*Deceased Muhammad Uris S/o Sabro Dahri was my husband, from whom I have six children. I was in love with accused Muhammad Uris @ Porho S/o Muhammad Alam Dahri, who used to come at my house. I alongwith accused Uris made a plan to commit murder of my husband Muhammad Uris S/o Sabro and then we would solemnize marriage with each other. On 06.10.2010, in the night time, accused Uris came at my house, my husband called Subhan Ali in the house and we altogether ate the chicken food. Thereafter, Subhan went away, I prepared tea and accused Uris gave me some intoxicated pills, which, I mixed into tea of deceased, then, deceased went to sleep. At 1200 hours in the night time, I brought iron hammer, which was lying in the room of house, and gave it to accused, afterwards accused caused its blow on the head of deceased Uris and became dead. Then, accused dug a ditch on the southern side of courtyard of our house and buried the dead body there. Then accused went away to Hala in the dawn / fajar time. I have committed murder of my husband in connivance with the accused.(bold added)*

RTI  
Khadija

Before me  
Sd/- (in English)  
08.01.2011  
I/C Kazi A. Hakeem  
Civil Judge & Judicial Magistrate  
Shahdadpur"

**17. Law on retraction of judicial confessions.**

After a review of the relevant law on the legal validity of judicial confessions the Hon'ble Supreme court in the case of **Ch. Muhammad V Yaqoob V The State** (1992 SCMR 1983) reached the following conclusion:

5



*"The legal position, which has emerged from the above reports, seems to be that in order to judge the evidentiary value of retracted confession, the Court is to advert to the question, whether the same appears to have been made voluntarily, without any inducement, duress or coercion with the object to state the truth. If the Court is satisfied on the above aspect, the mere fact that there were some irregularities in recording of a confession, would not warrant disregarding of the same". (bold added)*

18. It is settled law that a retracted judicial confession can be legally admissible and used against its maker in certain circumstances. In the later case of **Muhammad Amin V The State** (PLD 2006 SC 219) it was held at P.224 Para 9 as under;

*"9. There is no cavil to the proposition that conviction could have been awarded on the basis of retracted confession which proposition was examined in case of Mst. Joygun Bibi v. The State PLD 1960 (SC (Pak) 313 as under:-*

*"We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true."*

10. Similarly in the case of the State v. Minhun alias Gul Hassan PLD 1964 SC 813 this Court has observed as under:-

*"As for the confessions the High Court, it appears, was duly conscious of the fact that retracted confession whether judicial or extra judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. It is well-settled that as against the maker himself his confession, judicial or extra judicial, whether retracted or not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement." (bold added)*

19. Thus, the court laid down a two pronged test as under (a) whether the retracted judicial confession appears to have been made voluntarily, without any inducement, duress or coercion and (b) was made with the object to state the truth.



20. Notably it was also held that if both (a) and (b) were satisfied that even if there were some irregularities in recording of a confession it would not warrant disregarding of the same. In our view however following the case of **Azeem Khan** (Supra) such irregularities must be of a minor nature and must not have detracted from either the voluntariness or truthfulness of the confession.

21. In the case of **Bahadur V State** (PLD 1996 SC 336) although it was suggested that a judicial confession alone can be made the basis of conviction the safer course was to look to see if there was any corroborative material available to determine its truthfulness

22. In the case of **Manjeet Singh V State** (PLD 2006 SC 30) a further requirement seemed to be added that in determining the truthfulness of the confession it had to be placed within the context of the whole of the prosecution evidence/case.

23. In our view therefore we are not in any doubt that a retracted confession before a magistrate can be the basis of convicting in a capital case however it must be;

(a) **Voluntary** i.e. without threat or inducement and

(b) **Its object must be to state the truth**; assistance for which can be ascertained from (i) whether the confession appears truthful within the context of the prosecution case and (ii) whether there is any other evidence on record which tends to corroborate the truthfulness of the confession and

(c) **Only minor irregularities regarding the rules concerning the recording of judicial confessions can be permitted as determined on a case to case basis** the main criteria being that such irregularities have not adversely effected the voluntariness or truthfulness of the confession.

24. In considering the appellants confession it is important to note that the appellant in her S.342 Cr.PC statement does not deny making the confession. Instead she makes three main complaints (i) that she did not know why she was brought before the magistrate (ii) her statement was made in a hurried manner and (iii) she was handed over to the same police who had brought her after her confession.

25. It is quite clear from the evidence of PW 5 Abdul Hakeem who was the judicial magistrate who recorded the appellant's confession that complaints (i) and (ii) above have no substance. It is true with regard to complainant (iii) that the appellant was handed back to the IO who had brought her for her confession but it is



clear from the evidence that she was handed immediately from the IO into judicial custody and as such in our view this sole defect will not impinge on the voluntary and truthfulness of her confession. It has also been held that there is no hard and fast rule concerning the delay in recording a judicial confession and that each case will turn on its own particular facts and circumstances and as such we give little weight to the delay in recording the judicial confession. In this respect reliance is placed on the case of **Muslim Shah** (Supra)

26. **A close examination of the appellant's confession also reveals that it is true and fits in with the prosecution case.** It is notable that (a) she planned to murder her husband/deceased because she wanted to marry her deceased co-accused after the murder who she had fallen in love with which was also the motive for the murder (b) She corroborates the evidence of PW 4 Subhan Ali that on the night of the murder he came to her house and had dinner with the deceased and that she and the deceased co-accused was also present (c) that the murder weapon was the hammer which was recovered by the police on her pointation and (d) that her deceased co-accused buried the body of the deceased in her house.

(ix) **Thus, the final link in the chain** is the appellant's confession which we place full reliance on as we find the confession to have been made voluntarily, truthful and fully supportive of the prosecution case.

(c) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the deceased going missing, the lodging of the FIR, the arrest of the appellant, discovering the place of burial of the deceased on her pointation, the recovery of the hammer on her pointation (murder weapon) to her confession before the magistrate.

(d) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate her in this case by for example making up her arrest or foisting the hammer on her and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on **Mustaq Ahmed V The State** (2020 SCMR 474).

(e) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication which has not been substantiated whatsoever by the defence. Thus, for the reasons mentioned above we disbelieve the defense case as an afterthought.



27. Thus, based on the above discussion where we have found that that the prosecution has proved its case beyond a reasonable doubt against the appellant based on reliable circumstantial evidence where **all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused and hereby up hold the conviction of the appellant.**

28. With regard to sentencing we find that the motive for the murder has been proved by the prosecution through the confession of the appellant. Namely she wanted to murder her husband/deceased in order to marry the deceased co-accused who she had fallen in love with.

29. Since however this is a case based solely on circumstantial evidence which as mentioned above must be viewed with a great deal of care and caution and it was the deceased co-accused who caused the hammer blows to the head of the deceased which caused his murder and not the appellant who only provided him with the hammer by exercising judicial caution we hereby reduce the sentence of the appellant from death to life imprisonment and answer the confirmation reference in the negative. Apart from the above modification all other sentences, fines, compensation and other penalties in the impugned judgment shall remain in tact and with regard to other sentences of imprisonment they shall run concurrently. The appellant shall have the benefit of S.382 B Cr.PC.

30. The appeal stands dismissed except as modified above in terms of sentencing.